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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**OAKLAND DIVISION**

DOUG SPINDLER, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

SEAMLESS CONTACTS INC.,

Defendant.

CASE NO.: 4:22-CV-00787-KAW

**STIPULATED ORDER RE: DISCOVERY  
OF ELECTRONICALLY STORED  
INFORMATION FOR STANDARD  
LITIGATION**

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**1. PURPOSE**

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

**2. COOPERATION**

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the Discovery of ESI.

**3. LIAISON**

The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

**4. PRESERVATION**

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- a) Only ESI created or received between January 1, 2018 and present will be preserved;
- b) The parties will exchange a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing manager.” The parties shall add or remove custodians as reasonably necessary;
- c) The parties will exchange a list of data sources that contain potentially relevant information but for which the party has determined are not reasonably accessible for search, review, or production because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B); and

- 1 d) The parties will meet and confer regarding data sources for which the parties cannot  
2 feasibly preserve content due to proportionality factors or because the sources are not  
3 reasonably accessible.

4 **5. SEARCH**

5 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if  
6 appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is  
7 subject to production in discovery and filter out ESI that is not subject to discovery. The Parties  
8 agree that each Party is best situated to determine the most appropriate method or methods for that  
9 Party to search, collect, cull, and produce its own documents responsive to discovery.

10 **6. PRODUCTION FORMATS**

11 The parties agree to produce documents in ☒ PDF, ☒ TIFF, ☒ native and/or ☐ paper or a  
12 combination thereof (check all that apply)] file formats. The Producing Party will disclose its  
13 intended format to the Receiving Party prior to production and cooperate to arrange for the mutually  
14 acceptable production of such documents. The Parties recognize that in some instances where  
15 documents have been produced in a form other than native, subsequent production of the same  
16 documents in native form may be warranted upon a showing of reasonable necessity by the  
17 Requesting Party. The parties agree not to degrade the searchability of documents as part of the  
18 document production process.

19 Each Party is required to produce only a single copy of a responsive document and each  
20 Party may deduplicate responsive ESI across custodians by removing exact duplicates only. A party  
21 may also de-duplicate email threads and attachments (i.e., files associated with an email for retention  
22 and storage as a single message unit), provided the most inclusive non-privileged responsive email  
23 in a thread will be produced and such deduplication will not exclude any attachments from emails in  
24 the rest of the thread that would otherwise be produced.

25 The Parties shall undertake reasonable efforts to preserve parent-child relationships within a  
26 document family (e.g., the association between an attachment and its parent document, or a  
27 document and any embedded documents). The child-document(s) should be consecutively produced  
28 immediately after the parent-document.

1 If a Receiving Party identifies a hyperlinked file that it reasonably believes to be responsive  
2 (by identifying the Bates number of the document within which the hyperlink is embedded) and  
3 seeks its identification or production, that Producing Party shall undertake reasonable efforts to  
4 locate the hyperlinked file and either identify by Bates number the hyperlinked document if already  
5 produced or collect the document if it still exists on the Producing Party's systems and produce it, if  
6 responsive, non-privileged, and to the extent not unduly burdensome (either individually or  
7 cumulatively).

## 8 **7. DOCUMENTS PROTECTED FROM DISCOVERY**

9 A Party may redact (1) information that is privileged or protected from discovery as work  
10 product or by reason of any other applicable privilege or immunity; and (2) information subject to  
11 non-disclosure obligations imposed by governmental authorities, law or regulation (e.g., protected  
12 personal information). The handling of material protected from disclosure is governed by the  
13 Stipulated Protective Order and Federal Rule of Evidence 502(d). Each redaction on a document  
14 shall be endorsed with the word "redacted" or "redaction," along with the basis for such redaction on  
15 the face of the document (e.g., "Redacted – Attorney Client Privilege"). Certain documents may be  
16 difficult to redact, such as voluminous Excel spreadsheets. Should redactions to a document result in  
17 the document becoming difficult for the Receiving Party to review, the Receiving Party may inform  
18 the Producing Party and the Parties will meet and confer to discuss a reasonable format for  
19 production of such documents.

20 In an effort to reduce burden and costs, the Parties agree that the following documents need  
21 not be included on a privilege log: (1) Communications between the Parties and counsel (including  
22 internal communications within a law firm or a legal department of a corporation) on and after  
23 February 7, 2022; (2) Work product created by or for trial counsel in this matter after February 7,  
24 2022; (3) Documents redacted for privilege, provided that the following fields on redacted emails  
25 remain unredacted: from, to, cc, bcc, date, subject.

## 26 **8. MODIFICATION**

27 This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court  
28 for good cause shown.

Dated: August 30, 2022

By: /s/ Ann Marie Mortimer  
Ann Marie Mortimer  
Brian A. Wright  
Attorneys for Defendant  
Seamless Contacts, Inc.

**TURKE & STRAUSS LLP**

By: /s/ Raina C. Borrelli  
Raina C. Borrelli  
Samuel J. Strauss  
Attorneys for Plaintiffs  
and the Proposed Class

Dated:

Kandis A. Westmore  
United States Magistrate Judge

**ATTESTATION**

I, Ann Marie Mortimer, am the ECF user whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I attest that concurrence in the filing of the document has been obtained from each of the other Signatories.

Dated: August 30, 2022

\_\_\_\_\_  
/s/ Ann Marie Mortimer  
Ann Marie Mortimer